IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6268 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

G S R T CORPN

Versus

MIRSABMIYAN CHOTUMIYAN MALEK

Appearance:

1. Special Civil Application No. 6268 of 2000

MR NAGESH C SOOD for Petitioner No. 1-2

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/03/2002

ORAL JUDGEMENT

#. Heard Mr.Nagesh Sood, learned advocate appearing on behalf of the petitioners Corporation.

#. In the present petition, the petitioner Corporation

has challenged the award passed by the Industrial Tribunal in Reference [IT] No.469 / 1998 dated 17th December, 1999, wherein the tribunal has set aside the punishment imposed by the Corporation in respect of the incident dated 6th November, 1988. Initially, this Court has issued RULE and granted interim relief. It is noticed that though notice of RULE has been served on the respondent workman but none remained present on behalf of the respondent workman and no advocate seems to have engaged by the respondent on his behalf in this proceedings. Therefore, this matter is taken up for hearing even in absence of the respondent workman.

#. Learned advocate Mr.Sood on behalf of the petitioners Corporation has submitted that the allegation against the workman was that he met with accident, wherein one cyclist had died. On that basis, chargesheet was served and after completion of the departmental inquiry, the respondent driver was dismissed from service on 7th March, 1990. Thereafter, the workman approached the first appellate authority and the first appellate authority reduced the punishment from dismissal to stoppage of five increments with cumulative effect. Being aggrieved thereof, the workman further approached the second appellate authority which also further reduced the punishment for stoppage of two increments and thereafter, the workman has raised the industrial dispute for adjudication to the industrial tribunal, Nadiad. Learned advocate Mr.Sood has also submitted that in departmental inquiry, reporter was examined and thereafter the concerned workman was also examined and then only the competent authority has come to the conclusion that charge levelled against the respondent workman is found to be proved and ultimately, punishment order was passed by the competent authority. Mr.Sood, learned advocate has also submitted that the industrial tribunal has no power to reappreciate the evidence and the tribunal cannot act as an appellate authority. Therefore, the tribunal has committed error in reappreciating the evidence which was led in the departmental inquiry. He also submits that since one cyclist died, his heirs must have filed MACP case, for that the Corporation has to face said proceedings. Therefore, he submitted that before the inquiry officer, whatever evidence was available, same were legal evidence and on that basis, ultimately come conclusion and therefore, the same was not required to be interfered with by the tribunal and therefore also, the tribunal has committed gross error in passing such award.

#. I have considered submissions of learned advocate

Mr.Sood on behalf of the petitioner Corporation. So far the first contention raised by learned advocate Mr.Sood that the industrial tribunal has cannot reappreciate the evidence and cannot act as an appellate authority, such submission cannot be accepted in view of the decision of the Apex Court in case of WORKMEN OF F.T. & R.CO V. THE MANAGEMENT reported in AIR 1973 SC 1227. The relevant observations made in para-37 are quoted as under :-

> "37. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately, it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enurers to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilty or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A."

#. According to the view taken by the Apex Court, while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court and Industrial Tribunal has powers to reappreciate the evidence which was led in the departmental inquiry. Not only this, after reappreciating the evidence, the labour

court or the tribunal is competent and entitled to come to his own conclusion like an appellate authority. This aspect has been made clear by the Apex Court in the aforesaid judgment. Therefore, such contention which has been raised by learned advocate Mr.Sood cannot be accepted.

#. The second submission of Mr.Sood, learned advocate that in inquiry, reporter was examined and thereafter the concerned workman was also examined but one more aspect that in departmental inquiry proceedings, the misconduct is proved against the respondent workman. However, it has come on record that no eye witness was examined. However, the inquiry officer has considered Panchanama and other statements of the witnesses recorded by the Police Officer but not examined by the reporter but same has been considered in criminal case by the competent criminal court. Ultimately, in criminal case, the respondent workman has been declared acquittal and therefore, same evidence relied without giving any reasonable opportunity to the respondent workman to cross examine such witnesses. Therefore, Panchnama and statement relied on by the inquiry officer, cannot be believed because no opportunity was given to the respondent workman. It is also necessary to note that there is report submitted by the reporter wherein said cyclist was also held to be partly responsible for the said accident. This is made clear in the report of the reporter. Therefore, considering all these aspects, according to my opinion, the tribunal has rightly reappreciated the evidence and rightly come to the conclusion that charge levelled against the respondent workman is not found to have proved and ultimately, punishment imposed in respect of the accident dated 6th November, 1988 has been rightly set aside by the Tribunal. According to my opinion, the tribunal has not committed any error either of jurisdiction nor any procedural irregularity committed by the tribunal which in any way calls for interference by this Court while exercising the powers under Article 226 and 227 of the Constitution.

Therefore, there is no substance in this petition and the same is rejected accordingly. Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 15-3-2002 [H.K.Rathod, J.]

#kailash#